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INTERSTATE COMMERCE COMMISSION

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[CS&M Ref.: 4255-402]

LEASE OF EQUIPMENT

Dated as of April 1, 1979

between

THE BALTIMORE AND OHIO RAILROAD COMPANY,

Lessee

and

CARGILL LEASING CORPORATION,

Lessor

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LEASE OF EQUIPMENT dated as of April 1, 1979, between THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation (the "Lessee"), and CARGILL LEASING CORPORATION, a Delaware corporation (the "Lessor").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Whitehead & Kales Company (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (the "Equipment");

WHEREAS the Builder is assigning its interests in the CSA to The Connecticut Bank and Trust Company, acting as agent (hereinafter, together with its successors and assigns and the Investors, as hereinafter defined, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor and the parties named in Schedule A thereto (the "Investors");

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the CSA (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the Lessor will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement (the "Lease Assignment") and the Lessee will consent to the Lease Assignment pursuant to a Lessee's Consent and Agreement (the "Consent");

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not

limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the CSA, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an authorized representative, who may be an employee of the Lessee, to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor

on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, one interim rental payment on June 1, 1979, and thereafter 20 consecutive semiannual payments payable in arrears on June 1 and December 1 of each year commencing December 1, 1979. The interim rental payable on June 1, 1979, shall be in an amount equal to .0277778% of the Purchase Price (as defined in the CSA) of each such Unit then subject to this Lease from the Closing Date (as defined in the CSA) for that Unit for each actual day elapsed to and including June 1, 1979. The 20 semiannual rental payments shall each be in an amount equal to 5.6651781% of the Purchase Price of each such Unit then subject to this Lease.

In addition to the foregoing basic rentals, the Lessee will pay to the Lessor the following additional rentals: (i) an amount equal to any deficiency amount required to be paid by the Lessor pursuant to the first paragraph of Paragraph 9 of the Participation Agreement, and (ii) an amount equal to any amount required to be paid by the Lessor pursuant to clauses (a) or (b) of the last paragraph of Paragraph 9 of the Participation Agreement, in each case on such dates as will enable the Lessor to make such payment.

The rentals payable as set forth above have been calculated on the assumption that the Units will have been settled for on May 31, 1979, and the aggregate Purchase Price shall be equal to \$3,093,200. If for any reason any Units are settled for on dates other than May 31, 1979, or the aggregate Purchase Price shall be other than as aforesaid, then the rentals in respect of the Units payable on and after December 1, 1979, shall be increased or decreased by such amounts as shall, in the reasonable opinion of the Lessor, cause the Lessor's after-tax economic and accounting yields

and cash flows (computed on the same assumptions, including tax rates, as were utilized by the Lessor in originally evaluating this transaction) to equal the after-tax economic and accounting yields and cash flows that would have been realized by the Lessor if all Units had been settled for on May 18, 1979, and in the assumed aggregate Purchase Price as aforesaid; provided, however, that in no event shall the rentals payable on each rental payment date on or after December 1, 1979, be less than the amounts required to satisfy the obligations of the Lessor pursuant to the third and fourth paragraphs of Article 4 of the CSA.

If any of the semiannual rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Hartford, Connecticut or Minneapolis, Minnesota, are authorized or obligated to remain closed.

Unless the Lease Assignment is not executed and delivered, the Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, other than the payments provided for in §§ 6, 9 and 19 hereof (except indemnification payments owing to the Vendor pursuant to Articles 6 and 13 of the CSA), but including without limitation the payments provided for in this § 3 and in § 7 hereof, at the principal office of the Vendor until the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment (as defined in the CSA), together with interest and all other payments required by the CSA, for the account of the Lessor in care of the Vendor, with instructions to the Vendor (subject to the provisions of the Consent) first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor, or as otherwise provided

in the Lease Assignment and the Consent, by 11:00 a.m., Hartford, Connecticut time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9, 14 and 19 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA and be continuing, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Marking of the Units. The Lessee will cause each Unit to be kept numbered with its identifying number as set forth in Schedule A hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Equipment and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's ownership and the Vendor's security interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Lessor and the Vendor by the Lessee and filed, recorded and deposited by the

Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Units to be lettered with the names or initials or other insignia of the Lessee or its affiliates.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, Federal, or foreign taxes (other than gross receipt taxes [except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by Lessor's net income, Lessor's value added taxes, excess profits taxes and similar taxes or general corporation, franchise or like taxes measured by Lessor's capital, capital stock or net worth) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, terms hereof or the CSA (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the security interest of the Vendor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof is permitted by law and does not, in the reasonable opinion of the Lessor, adversely affect the title, property, rights or interest of the Lessor hereunder or the Vendor under the CSA. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof and the Lessor agrees to

provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessor shall have given the Lessee written notice of such imposition prior to such payment; provided further, that the failure of the Lessor so to notify the Lessee shall not affect the obligations of the Lessee thereunder.

In the event that the Lessor shall become obligated to make any payment pursuant to Article 6 of the CSA to the Builder or the Vendor or otherwise pursuant to any correlative provision of the CSA, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to impositions are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in such Units and will send copies thereof to the Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in the Lessor's name and on the Lessor's behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

§ 7. Maintenance; Casualty Occurrences; Insurance.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition, reasonable wear and tear excepted.

In the event that any Unit shall be or become worn out beyond repair, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or requisitioned for use or otherwise, except requisition for use by the United States Government for a stated period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such Casualty Occurrence the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit determined as of the date of such payment in accordance with the schedule referred to below. As of the rental payment date on which the Casualty Value is due, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. Any Casualty Value not paid when due shall accrue interest as provided in § 16 hereof. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. As used in this § 7, "net proceeds" shall mean the proceeds of any sale less any expenses, costs and fees incurred in connection with such sale, including without limitation transportation costs, commissions, taxes and attorneys' fees.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite the rental payment date

next succeeding the actual date of such Casualty Occurrence, or if there is no such rental payment date, the last rental payment date.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor, within 30 days after the Treasury Department of the Lessee receives notice of such Casualty Occurrence, an amount equal to the Casualty Value of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit, and the Lessee shall be entitled to the net proceeds of any sale to the extent they do not exceed the Casualty Value of such Unit.

In the event of the requisition for use by the United States Government (the "Government") of any Unit during the term of this Lease or any renewal thereof not constituting a Casualty Occurrence all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance

thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained types and amounts of insurance that are satisfactory to the Lessor in respect of the Units at the time subject hereto and the use and operation thereof, including, without limitation, property insurance and public liability insurance, in such amounts and for such risks and with such insurance companies as are consistent with prudent industry practice, but in any event at least comparable to insurance coverage carried by the Lessee in respect of similar equipment owned or leased by it; provided, however, that, in respect of property insurance, the Lessee may self-insure any Unit to the extent that it self-insures similar equipment owned by it and as is consistent with prudent industry practice. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days prior notice to the Lessor of cancelation or removal of the Lessor as a named insured, (ii) name the Lessor as an additional named insured as its interest may appear with respect to public liability insurance and as a loss payee with respect to property insurance, and (iii) and shall provide that in respect of the interest of the Lessor in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor) and shall insure the Lessor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor). So long as no event of default, or event which with lapse of time or giving of notice or both could constitute an event of default, under § 10 hereof shall have occurred and be continuing, if the Lessor shall receive any insurance proceeds, other than proceeds of insurance which has been carried by the Lessor, or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence, other than proceeds of insurance which has been carried by the Lessor, shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports. On or before November 1 in each year, commencing with the calendar year 1980, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding June 30 the amount, description and numbers of all Units then leased hereunder, as to each unit of Equipment, the description and numbers of the railroad equipment to which such unit is attached and the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition, state of repair and use of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the CSA have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSEE ACKNOWLEDGES AND AGREES (1) THAT EACH UNIT IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY THE LESSEE, (2) THAT THE LESSEE IS SATISFIED THAT THE SAME IS SUITABLE FOR ITS PURPOSES, (3) THAT THE LESSOR IS NOT A MANUFACTURER OR INSTALLER THEREOF, NOR A DEALER IN PROPERTY OF SUCH KIND, (4) THAT THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND (5) THAT THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense,

whatever claims and rights the Lessor may have against the Builder under the provisions of Item 3 of Annex A and the patent infringement and title indemnification provisions of Article 13 of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability (including, without limitation, strict liability in tort or otherwise), loss or damage caused or alleged to be caused directly or indirectly by any Unit or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Unit or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Unit. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense and the Lessor will have title thereto. To the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement or addition of or to any part of any Unit which is not readily removable without causing material damage to the Units (herein called a "Nonremovable Government Mandated

Alteration"), the Lessee will conform therewith at the Lessor's expense, will give the Lessor prompt written notice thereof, and the Lessor will have title thereto. The Lessee shall lease such Nonremovable Government Mandated Alterations until the termination of this Lease or any renewal hereof upon the same terms and conditions as are herein specified at a rate which will result in preserving for the Lessor both the after-tax rate of return and the after-tax cash flow that would have been realized by the Lessor if such Nonremovable Government Mandated Alteration had not occurred (i) based on the rates of Federal, state and local taxes on, based on, or measured by net income in effect from time to time and (ii) in all other respects based on the assumptions and methods of calculation utilized by the Lessor in originally evaluating the transaction described in this Lease and related documents. If such laws or rules require any alteration, replacement or addition of or to any part of any Unit which is readily removable without causing material damage to the Units (herein called a "Removable Government Mandated Alteration") Lessee will conform therewith, at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence or which are Removable Government Mandated Alterations hereunder shall be owned by the Lessee and shall be removed by it upon the return of the Units pursuant to § 14 hereof.

The Lessee assumes the risk of and agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort or otherwise) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of this Lease, the CSA, the Participation Agreement or any sublease entered into pursuant to § 12 hereunder, or the occurrence of a default, an event of default or an Event of Default under any of the above instruments, the ownership of

any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or the transfer of title to or its security interest in the Equipment by the Vendor pursuant to any provision of the CSA. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease. The indemnities arising under this § 9 shall not be deemed to operate as a guarantee of the principal of or interest on the CSA Indebtedness under the CSA.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units, the security interest of the Vendor in the Units, or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. Default shall be made in payment of any amount provided for in §§ 3, 7 or 13 hereof, and such default shall continue for ten days;

B. The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

C. Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, in the Consent, or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee, with a copy, in the case of notice by the Vendor, to the Lessor, specifying the default and demanding that the same be remedied or if the representations of the Lessee contained in the Participation Agreement shall have been materially incorrect when made;

D. A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended or under any other provision of Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease or under the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier or by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended;

E. Any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Consent, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

F. An event of default set forth in Article 15 of the CSA shall have occurred arising out of any default by the Lessee, in performing any of its obligations hereunder or under the Consent and shall not have been cured as provided for therein;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units so terminated shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units so terminated may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts which the Lessor, in its sole discretion, shall specify (x) a sum, with respect to each Unit, which represents (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to

be computed in each case on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, plus (B) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of the covenant, representation or warranty of this Lease other than for the payment of rental, or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the net proceeds of the sale of the Equipment if sold, or, if not sold at such time, the amount the Lessor reasonably estimates to be the sales value of such Unit at such time.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments or other payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

Except as otherwise provided in this Lease and the CSA, the Lessee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more Units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Lease and the CSA and any and all rights of redemption.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any rolling stock to which any Units are attached have been interchanged to return such rolling stock so interchanged), cause (a) if requested by the Lessor, the Units to be detached from each unit of railroad rolling stock to which it has been attached, (b) the Units to be moved to such point or points on its lines as shall be designated by the Lessor and shall there deliver the Units or cause it to be delivered to the Lessor and (c) the Units to be moved to such interchange point or points of the Lessee as shall be designated by the Lessor upon any sale, lease or other disposal of all or any part of the Units by the Lessor. At the option of the Lessor, the Lessor may keep the Units on any of the lines or premises of the Lessee until the Lessor shall have leased, sold or otherwise disposed of the same, and for such purpose the Lessee agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Lessor reasonably convenient to the Lessee and, at the Lessee's risk, to permit inspection of the Units by the Lessor, the Lessor's representatives and prospective purchasers and users, the movement and storage of such Units to be at the expense and risk of the Lessee without charge to the Lessor for insurance, which shall be provided by Lessee until expiration of Lessee's obligations under this Section in amounts and pursuant to the requirements of § 7 of this Lease. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair. This agreement to detach and deliver the Units and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific perfor-

mance hereof. The Lessee hereby expressly waives any and all claims against the Lessor and its agent or agents for damages of whatever nature in connection with any retaking of any Units in any reasonable manner. All gross amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not detached, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .0314732% of the Purchase Price of such Unit exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns (including the Vendor except, as to the Vendor, such rights hereunder that are not assigned to the Vendor pursuant to the Lease Assignment).

So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the CSA, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge or security interest (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, charge or security interest which

arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Lessor and of the Vendor, adversely affect the title of the Lessor or the security interest of the Vendor in or to the Units or otherwise under this Lease or the CSA. Any amounts paid by the Lessor or the Vendor in discharge of such liens, charges or security interests upon the Units shall be secured by and under this Lease.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the CSA, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

The Lessee shall have the right to sublease any or all of the Units from time to time to The Chesapeake and Ohio Railway Company or Western Maryland Railway Company, for terms not to extend beyond the term of this Lease, but only upon and subject to all the terms and conditions of this Lease and of the CSA; provided, however, that every such sublease shall be subject to the rights and remedies of the Vendor under the CSA and the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an event of default thereunder or an Event of Default hereunder and that no such sublease shall relieve the Lessee of its obligations to the Lessor under this Lease.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Participation Agreement and the Consent) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

§ 13. Renewal and Right of First Refusal.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease elect (a) to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for one additional two-year period commencing on the scheduled expiration of the original term of this Lease at a rental payable in semiannual payments on June 1 and December 1 in each year. Each semiannual rental payment shall be in an amount equal to 2.832589% of the Purchase Price of each Unit then subject to this Lease.

The Lessor agrees that (provided no default hereunder shall have occurred and be continuing or this Lease shall not have been earlier terminated) in the event that the Lessor elects to sell the Units to third parties at the expiration of the extended term of this Lease, if any, the Lessor shall give the Lessee at least 10 business days' prior written notice of such sale, specifying the sale price and terms of the sale, and the Lessee shall have the sole right and option for a period of 10 business days from the date of receipt of such notice to purchase all, but not less than all, of the Units relating to such sale at the same price and on the same terms as specified in such notice but at not less than a price equal to the Fair Market Value thereof. The Lessee shall exercise such purchase right by delivery to the Lessor of a written notice within said 10-day period specifying a date of purchase which date shall not be later than 10 business days after the date of delivery of such notice by the Lessee to the Lessor. The foregoing right of the Lessee shall become operative only at the expiration of the extended term of this Lease, if any, and shall expire with respect to the Units relating to such sale upon the Lessee's first

failure or refusal to exercise its purchase rights hereunder; provided, however, that in any event the foregoing right of the Lessee shall expire with respect to all of the Units 90 days after the termination of the extended term of this Lease, if any. In the event that the Lessee shall have delivered a notice of its election to purchase such Units and the Lessee continues in possession of any such Units, the provisions of this Lease (including the obligation to pay rent) shall continue to apply in respect of such Units upon the same terms and conditions set forth herein from the date such notice is delivered to the Lessor until the date of such purchase.

Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without recourse, representation or warranties of any kind) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or prior to the valuation date the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor may select with the approval of the Lessee, or failing such approved selection, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 20 days following appointment and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

§ 14. Return of Units upon Expiration of Term.

The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable

on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee the Lessee will, at its own cost and expense, at the request of the Lessor, detach each Unit from the unit of railroad rolling stock to which it had been attached, and deliver possession of such Unit to the Lessor at such point or points on its lines as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit at such point or points on the Lessee's lines as the Lessee may select, in facilities furnished by the Lessee for a period not exceeding 150 days after the delivery of the last Unit to the Lessor and transport all such Units, on a one time basis, at any time within such 150-day period, to any reasonable place on the lines of railroads operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee without charge to the Lessor for insurance, which shall be provided by Lessee until expiration of Lessee's obligations under this Section in amounts and pursuant to the requirements of § 7 of this Lease. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards then in effect under any applicable rules of any governmental agency or other organization with jurisdiction and (iii) remove, at the Lessee's expense, all additions, modifications and improvements owned by the Lessee. The detaching, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to detach, deliver, store and transport the Units, and the Lessee shall defend and indemnify the Lessor against any damages, cost or liability incurred by the Lessor as a consequence of Lessee's failure to perform in accordance with the terms of this Section. All gross amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not detached, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount

equal to the amount, if any, by which .0314732% of the Purchase Price of such Unit exceeds the actual earnings received by the Lessor on such Unit for each such day.

§ 15. Recording. The Lessee will cause this Lease, the Lease Assignment, the CSA and the CSA Assignment to be filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will further cause this Lease and/or appropriate financing statements or continuation statements to be filed and recorded, and, from time to time when required, refiled and rerecorded, in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the State of Maryland (and, if the Lessee changes its chief place of business, in any such other State) in like manner as if the Lessor's interest in this Lease represented a security interest or in any other State of the United States of America or the District of Columbia where filing is reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to the satisfaction of counsel of the Lessor and Vendor, of their interests and rights under this Lease or the purpose of carrying out the intention of this Lease. The Lessee will undertake, at its expense, or cause to be undertaken, the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform, or cause to be done and performed, any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish, or cause to be furnished, to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and in connection with other than the initial filings with respect thereto an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the CSA shall be filed and recorded with the Interstate Commerce Commission and financing statements in respect of the interests of the Vendor in the Units, the CSA and the Lease shall have been filed in accordance with the Uniform Commercial Code as in effect in the States of Minnesota and Maryland prior to the delivery and acceptance hereunder of any Unit.

§ 16. Interest on Overdue Rentals. Anything to

the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder, including without limitation §§ 3, 6, 7, 9 and 10 hereof, shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 11% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 17. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at Cargill Leasing Corporation, 2301 Crosby Road, Wayzata, Minnesota 55391, Attention of Controller; and

(b) if to the Lessee, at 2 North Charles Street, Baltimore, Maryland 21201, Attention of Senior Assistant Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 18. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and, except for the Participation Agreement, supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 19. Tax Indemnities. (a) Loss of Assumed Tax Benefits. If:

(i) the Lessor is not allowed for its fiscal year ending May 31, 1979, an investment credit under Section

38 and related sections of the Code with respect to any one or more of the Units of not less than 10% of the entire Purchase Price of such Unit or Units; or

(ii) the Lessor is not allowed the benefit of current deductions for depreciation with respect to the entire Purchase Price, commencing with its fiscal year ending May 31, 1979, on any one or more of the Units under Section 167(a) of the Code (x) computed pursuant to the asset depreciation range system of Section 167(m) of the Code and Section 1.167(a)-11 of the income tax regulations, (y) computed on the basis (A) of a net salvage value of zero, (B) that the basis of such Unit or Units under Section 167(g) of the Code is not less than the Purchase Price with respect to such Unit or Units, and (C) that such Unit or Units have an asset depreciation period of 12 years, and (z) computed pursuant to the double declining balance method of depreciation, switching to the sum of the years-digits method of depreciation and using the half-year convention described in Section 1.167(a)-11(c)(2)(iii) of the income tax regulations; or

(iii) the Lessor is not allowed the benefit of current deductions under Section 163 of the Code for interest payable under the CSA; or

(iv) any investment credits or deductions for depreciation with respect to any one or more of the Units are recaptured in whole or in part pursuant to Section 47 or Section 1245 of the Code or any successor provision or provisions thereto; or

(v) any amount includible in the gross income of the Lessor with respect to any one or more of the Units or any deduction allowable to the Lessor with respect to such Unit or Units or with respect to any interest payable under the CSA shall be treated as derived from, or allocable to, sources outside the United States; or

(vi) any amount is included in or attributed to the gross income of the Lessor as a result of any repair, improvement, alteration, modification or addition (including replacement of parts) to such Unit or Units made by the Lessee (herein called a "Capital Expenditure"), for any time prior to the end of the term of this Lease (including any renewal term);

(any such failure to allow, such recapture, such treatment

of income or deductions as derived from or allocable to sources without the United States, or such inclusion in gross income as a result of a Capital Expenditure being herein called a "Loss"), then, to the extent provided in paragraph (b) of this § 19, the Lessee shall pay to the Lessor as an indemnity the amount or amounts set forth in paragraph (d) of this § 19 at the time or times set forth therein.

(b) Indemnification and Exceptions. Except as hereinafter provided, the Lessee shall be required to indemnify the Lessor with respect to any Loss that results from:

(i) a Loss described in clause (i) or (ii) of paragraph (a) of this § 19, if such Loss results from the use of a Unit by any person prior to its delivery to the Lessor pursuant to the CSA and leased to the Lessee pursuant to this Lease;

(ii) the failure of an amount not less than the entire Purchase Price of any Unit or Units to qualify for the investment credit and double declining balance depreciation in the hands of the Lessor;

(iii) the Lessee's use of a Unit or Units in such a manner as to result in a Loss described in clause (iv) or (v) of paragraph (a) of this § 19;

(iv) a Capital Expenditure; or

(v) any act, failure to act or misrepresentation, at any time, by the Lessee or any of its officers, employees or agents (including, without limitation, any act, failure to act or misrepresentation, in respect of the income tax returns of the Lessee insofar as they relate to the transaction contemplated by this Lease and related documents, it being understood that the Lessee will not take or fail to take any action that is inconsistent with the Lessor being treated as the owner, and the Lessee being treated as the lessee, of the Units for Federal, state and local income tax purposes).

However, the Lessee shall not be required to indemnify the Lessor with respect to any Loss that results solely and directly from:

(i) a Casualty Occurrence, if the Lessee has made all payments with respect thereto that are required to be made pursuant to § 7 hereof;

(ii) a voluntary disposition by the Lessor of its beneficial interest in any Unit or Units, if such disposition (x) shall be the direct cause of such Loss with respect to such Unit or Units, (y) shall occur at a time while no Event of Default (as hereinafter defined), and no event that, with the lapse of time or the giving of notice, or both, would constitute an Event of Default, has occurred and is continuing, and (z) shall not be pursuant to the written consent of the Lessee;

(iii) the failure of the Lessor to claim in a timely and proper manner on its income tax returns for the appropriate years any credits or deductions contemplated by paragraph (a) of this § 19, unless the Lessor shall have been advised by independent tax counsel selected by the Lessor and approved by the Lessee (which approval shall not be unreasonably withheld), that there is no reasonable basis for claiming any such deduction or credit;

(iv) the failure of the Lessor to have sufficient Federal income tax liability against which to apply such credits or sufficient income to benefit from such depreciation or interest deductions;

(v) the failure of the Lessor to take timely action in contesting a claim made by the Internal Revenue Service, but only if such action is required by the terms of paragraph (c) of this § 19;

(vi) any amendment to, or change in, the Code, the income tax regulations thereunder or published administrative or judicial interpretations of the Code or such regulations, which change or amendment is not enacted and does not have an effective date on or prior to June 1, 1979; or

(vii) any act, or failure to act, at any time, by the Lessor or any of its officers, employees or agents, which is inconsistent with the Lessor's obligations under the Participation Agreement and this Lease, except at a time when an Event of Default (or an event that, with the lapse of time or the giving of notice, or both, would constitute an Event of Default) has occurred and is continuing.

(c) Proceedings. If at the conclusion of any audit the Lessor receives a preliminary or "30 day" letter from the Internal Revenue Service proposing an adjustment in

any item that, if agreed to by the Lessor, would result in a Loss with respect to which the Lessee would be required to indemnify the Lessor pursuant to this § 19, the Lessor shall promptly notify the Lessee of such proposed adjustment and shall furnish to the Lessee a statement describing such Loss in reasonable detail. If requested to do so by the Lessee, within 20 days after receipt of such statement, the Lessor shall promptly request from such independent tax counsel as may be selected by the Lessor and approved by the Lessee (which approval shall not be unreasonably withheld) (the "Special Tax counsel"), their opinion as to whether there is a meritorious basis for contesting such proposed adjustment. If the opinion is to the effect that there is a meritorious basis for contesting such proposed adjustment, the Lessor shall contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Lessor in its sole discretion. Upon the conclusion of such administrative proceedings, if any, the Lessor shall promptly notify the Lessee of the final adjustment proposed by the Internal Revenue Service and, if the Lessor receives within 30 days after such notice a written request to do so from the Lessee, the Lessor shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests the Lessor to appeal the decision of such a court or of any intermediate appellate court, the Lessor shall promptly request from Special Tax Counsel their opinion as to whether there is a meritorious basis for appealing such decision. If the opinion is to the effect that there is a meritorious basis for appealing such decision, the Lessor shall appeal such decision. The Lessor, in its sole discretion, shall determine the initial and any appellate court and shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency. The Lessor shall not be required to take any action as set forth in this paragraph (c) unless and until the Lessee shall have agreed to indemnify the Lessor in a manner satisfactory to it for any Loss that results from an adverse determination with respect to the proposed adjustment and shall have agreed to pay to the Lessor on demand all reasonable out-of-pocket costs and expenses, including without limitation attorneys' fees and expenses incurred by it in connection with the taking of such action. If the Lessor elects to pay taxes based on a proposed deficiency and sue for a refund thereof, and if the proposed deficiency would be a Loss with respect to which the Lessee would be required to indemnify the Lessor, then the Lessee shall pay to the Lessor on demand the amount of such taxes and interest

and penalties thereon which the Lessor shall have paid, and if the Lessor subsequently receives a refund of all or any part of such taxes and interest, it shall promptly pay to the Lessee the amount of such refunded taxes and interest plus the amount of any interest received by the Lessor from the United States Government with respect to such refunded taxes and interest. Notwithstanding anything to the contrary contained in this paragraph (c), the Lessor may at any time, whether before or after commencing to take any action with respect to a proposed adjustment, decline to take any further action with respect thereto, provided that, if the Lessee has properly requested such action pursuant to this paragraph (c), the Lessor notifies the Lessee that it waives its right to any indemnity with respect to any Loss that will result from acceptance of such proposed adjustment.

(d) Amount and Time of Payment of Indemnity. The amount of indemnity payable by the Lessee pursuant to this § 19 with respect to a Loss shall be such amount as will result, in the Lessor's reasonable judgment, in preserving for the Lessor both the after-tax rate of return and the after-tax cash flow that would have been realized by Lessor if such Loss had not occurred, based on the assumptions and methods of calculation utilized by the Lessor in originally evaluating the transaction described in this Lease and related documents. The amount of such payment of indemnity shall reflect (A) the amount of interest, additions to tax and penalties payable by the Lessor with respect to such Loss, (B) the amount of Federal, state and local taxes on, or measured by, net income (at the rates in effect on June 1, 1979), interest, additions to tax and penalties incurred by the Lessor as a result of the receipt of such indemnity payment, and (C) any amount paid by the Lessee to the Lessor pursuant to the next-to-last sentence of paragraph (c) of this § 19 which is not repaid by the Lessor to the Lessee pursuant to such sentence. The Lessor shall furnish the Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount of indemnity.

In determining the amount of indemnity payable by the Lessee pursuant to this § 19 with respect to a Loss which results from a Capital Expenditure, there shall be taken into account any investment credits and depreciation deductions to which the Lessor is or expects to be entitled, pursuant to § 19(a) hereof, with respect to such Capital Expenditure in the year in which the Capital Expenditure is made and in subsequent years, but if any such investment credits or depreciation deductions are subsequently disallowed,

recaptured or treated as derived from or allocable to sources outside the United States, such disallowance, recapture or allocation shall be treated as a Loss described in clause (i), (ii), (iv) or (v) of paragraph (a) of this § 19, as the case may be.

The Lessee's obligation to pay any indemnity payable pursuant to this § 19 with respect to a Loss shall become unconditional (1) in the case of a Loss that is required to be reflected on a tax return of the Lessor, 30 days after the date such tax return is filed; (2) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is not contested pursuant to paragraph (c) of this § 19, 30 days after the Lessee's receipt of the statement referred to in the first sentence of paragraph (c) of this § 19; and (3) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is contested pursuant to paragraph (c) of this § 19, 30 days after the day on which such contest is finally concluded.

The Lessee shall pay to the Lessor entitled to indemnification hereunder a lump sum indemnity at the time its obligation to pay indemnity pursuant to this § 19 becomes unconditional, (A) with respect to a Loss described in clause (i) of paragraph (a) of this § 19, and (B) with respect to any other Loss, if the Lessee's obligation to pay indemnity pursuant to this § 19 becomes unconditional on or after the termination of this Lease. Any other indemnity payable pursuant to this § 19 shall be structured as level future rent increases, and the Lessee shall commence payment of such increased rent on the first rental payment date after the Lessee's obligation to pay indemnity pursuant to this § 19 becomes unconditional. The amount of increased rental resulting from any one Loss shall be adjusted from time to time for each change in the rates of Federal, state and local taxes on, based on, or measured by, net income which affects the Lessor's net after-tax rate of return and after-tax cash flow.

(e) Adjustment of Casualty Values. In the event that the Lessee shall be required to indemnify the Lessor pursuant to this § 19 with respect to a Loss relating to a Unit or Units, the Casualty Value of such Unit or Units shall be appropriately reduced to reflect the reduction, if any, in taxes that will be payable by the Lessor with respect to such Unit or Units upon a Casualty Occurrence with respect thereto; provided, however, that such Casualty

Values shall not be reduced below the amounts required to satisfy the obligations of the Lessor under the CSA.

(f) Definition of Lessor. For purposes of this § 19, the term "Lessor" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Lessor is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

§ 20. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart marked Original Counterpart delivered to the Vendor pursuant to the Lease Assignment to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Maryland.

§ 22. Obligations of Lessor Under CSA; Additional Rentals. In the event that the Lessor shall become obligated to make any payment (other than payments for Equipment pursuant to paragraphs 3 and 4 of Article 4 of the CSA) or to perform any obligations pursuant to the CSA not covered by the provisions of this Lease (other than the proviso to the third paragraph of Article 12 of the CSA), the Lessee shall pay such additional rentals hereunder and perform such obligations so that all of the Lessor's obligations (other than as aforesaid) pursuant to the CSA shall be fully complied with, without regard for any limitation of liability of the Lessor contained in the CSA. This Section is not to be construed as a guarantee of the CSA Indebtedness (as defined in the CSA).

§ 23. Lessor's Right To Perform for the Lessee. If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate of 11% per

annum, accruing from the date payment shall be payable by the Lessee upon demand.

§ 24. Immunities; Satisfaction of Undertakings.

No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

THE BALTIMORE AND OHIO RAILROAD  
COMPANY,

[Corporate Seal]

Attest:

Assistant Secretary

by

~~Senior Assistant Vice-President~~  
~~and Treasurer~~

Local Term

Rev

CARGILL LEASING CORPORATION,

by

Authorized Officer

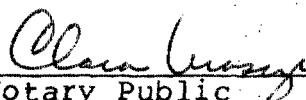
[Corporate Seal]

Attest:

Authorized Officer

STATE OF OHIO, )  
 ) ss.:  
 COUNTY OF CUYAHOGA, )

On this 1ST day of MAY 1979, before me personally appeared R.L. HINTZ, to me personally known, who, being by me duly sworn, says that he is SENIOR VICE PRESIDENT of THE BALTIMORE AND OHIO RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

  
 Notary Public

[Notarial Seal]

My Commission expires CLARA MASUGA, Notary Public  
 State of Ohio - Cuyahoga County  
 My Commission Expires April 21, 1984

STATE OF MINNESOTA, )  
 ) ss.:  
 COUNTY , )

On this day of 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of CARGILL LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
 Notary Public

[Notarial Seal]

My Commission expires

## SCHEDULE A TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Numbers</u> <u>(Inclusive)</u>
Auto Racks, Partially Enclosed, Tri-Level	88	RP-340- RP-427

## SCHEDULE B TO LEASE

Table 1

<u>Date</u>	<u>Percentage</u>
June 1, 1979	91.08616%
December 1, 1979	90.73287
June 1, 1980	89.57210
December 1, 1980	87.49111
June 1, 1981	84.29178
December 1, 1981	83.54058
June 1, 1982	80.40147
December 1, 1982	78.82911
June 1, 1983	75.43011
December 1, 1983	73.42471
June 1, 1984	69.57119
December 1, 1984	67.18890
June 1, 1985	63.16941
December 1, 1985	60.26927
June 1, 1986	55.88785
December 1, 1986	52.58684
June 1, 1987	48.06521
December 1, 1987	44.18709
June 1, 1988	39.36082
December 1, 1988	35.04765
June 1, 1989,	29.94427
December 1, 1989	27.03954
June 1, 1990	24.61021
December 1, 1990	22.46641
June 1, 1991, and thereafter	20.00000

Table 2

The percentages set forth in Table 1 of this Schedule B have been computed without regard to recapture of the investment credit (as referred to in § 19 of the Lease). Consequently, the Casualty Value of the Equipment suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance of the Equipment shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
Third	18.51852%
Fifth	12.34569
Seventh	6.17283